



## **ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9, 63, 80, 85, 86, 122, 123, and 412**

**[EPA-HQ-OAR-2012-0313; EPA-HQ-OAR-2012-0816; EPA-HQ-OW-2012-0813; FRL-9747-7]**

Section 610 Reviews of Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; NESHAP: Reinforced Plastic Composites Production; and NPDES Permit Regulation and Effluent Limitations Guidelines Standards for Concentrated Animal Feeding Operations (CAFOs)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Request for comments on three Regulatory Flexibility Act section 610 Reviews.

**SUMMARY:** This notice announces that EPA will review three regulatory actions pursuant to section 610 of the Regulatory Flexibility Act. Those three actions are: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (Heavy-Duty 610 Review); NESHAP: Reinforced Plastic Composites Production (Plastics 610 Review); and NPDES Permit Regulation and Effluent Limitations Guidelines Standards for CAFOs (CAFO 610 Review). As part of this review, EPA will consider and solicit comments on the following factors: The continued need for the rules; the nature of complaints or comments received concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate, or conflict with other Federal, State, or local government rules; and the degree to which the technology, economic conditions or other factors have changed in areas affected by the rules.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0313 (for the Heavy-Duty 610 Review), Docket ID No. EPA-HQ-OAR-2012-0816 (for the Plastics 610 Review), or Docket ID No. EPA-HQ-OW-2012-0813 (for the CAFO 610 Review), by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [rfa-sbrefa@epa.gov](mailto:rfa-sbrefa@epa.gov).
- Fax: (202) 566-9744.
- Mail: Docket ID No. EPA-HQ-OAR-2012-0313 (for the Heavy Duty 610 Review), Docket ID No. EPA-HQ-OAR-2012-0816 (for the Plastics 610 Review), or Docket ID No. EPA-HQ-OW-2012-0813 (for the CAFO 610 Review); Environmental Protection Agency, EPA Docket Center, Mail code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: Docket ID No. EPA-HQ-OAR-2012-0313 (for the Heavy Duty 610 Review), Docket ID No. EPA-HQ-OAR-2012-0816 (for the Plastics 610 Review), or Docket ID No. EPA-HQ-OW-2012-0813 (for the CAFO 610 Review); Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0313 (for the Heavy Duty 610 Review), Docket ID No. EPA-HQ-OAR-2012-0816 (for the Plastics 610 Review), or Docket ID No. EPA-HQ-OW-2012-0813 (for the CAFO 610 Review). The EPA's

policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center – Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The general telephone number for the Public Reading Room is (202)

566-1744 and the telephone number for the Air and Radiation Docket is (202) 566-1742 and for the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning EPA's 610 Review related to Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, please contact Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI, 48105; telephone number (734) 214- 4332; fax number (734) 214-4816; email address: [wysor.tad@epa.gov](mailto:wysor.tad@epa.gov). If you have questions concerning EPA's 610 Review related to NESHAP: Reinforced Plastic Composites Production, please contact Kim Teal, Office of Air Quality Planning and Standards, Environmental Protection Agency, Mailcode D243-04, Research Triangle Park, NC 27711; telephone number (919) 541-5580; fax number (919) 541-5450; email address: [teal.kim@epa.gov](mailto:teal.kim@epa.gov). If you have questions concerning EPA's 610 Review related to NPDES Permit Regulation and Effluent Limitations Guidelines Standards for CAFOs, please contact Hema Subramanian, Office of Wastewater Management, Environmental Protection Agency, 1200 Pennsylvania Ave NW, Mailcode 4203M, Washington, DC 20460; telephone number: (202) 564-5041; fax number (202) 564-6384; email address: [subramanian.hema@epa.gov](mailto:subramanian.hema@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

Section 610 of the Regulatory Flexibility Act requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities (SISNOSE). EPA undertakes section 610 reviews to decide whether the agency should continue a rule unchanged, amend it, or withdraw it. We encourage small entities

to provide comments on the need to change these rules, and in particular, how the rules could be made clearer, more effective, or if there is need to remove conflicting or overlapping requirements with other Federal or State regulations.

## **II. Section 610 Review of Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements**

On January 18, 2001, EPA established new exhaust emission standards for heavy-duty highway engines and vehicles, and new quality standards for highway diesel fuel (66 FR 5002). As part of this program, new emission standards took effect in model year 2007, and applied to heavy-duty highway engines and vehicles. These standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, the rule also reduced the level of sulfur in highway diesel fuel significantly by mid-2006. The program provided substantial flexibility for refiners, especially small refiners, and for manufacturers of engines and vehicles. For example, the program allowed small refiners with simultaneous gasoline sulfur requirements to sequence their sulfur-reduction technology upgrades in the most advantageous way, and also provided general hardship provisions to allow case-by-case relief. While EPA took steps to evaluate and mitigate impacts on small entities as part of the promulgation of this rule, this notice announces that EPA will review the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements rule pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the

technology, economic conditions or other factors have changed in the area affected by the rule. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID EPA-HQ-OAR-2012-0313 and follow the instructions provided in the **ADDRESSES** section of this document. The results of EPA's review will be summarized in a report and placed in the rulemaking docket referenced above. This docket can be accessed at [www.regulations.gov](http://www.regulations.gov).

### **III. Section 610 Review of National Emissions Standards for Hazardous Air Pollutants (NESHAP): Reinforced Plastic Composites Production**

The EPA promulgated NESHAP for reinforced plastic composites production (68 FR 19375) on April 21, 2003. The final rule (40 CFR part 63, subpart WWW) includes standards for both new and existing sources of hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements related to those standards. The NESHAP regulate production and ancillary processes used to manufacture products with thermoset resins and gel coats. The final standards contain a HAP emissions threshold that distinguishes between sources that typically can meet the HAP emissions limits using pollution prevention, and those that must use add-on controls.

Based on SBA size definitions and reported sales and employment data, we identified 279 of the 357 companies owning reinforced plastic composites facilities as small businesses. We also performed an economic impact analysis (EIA) that indicated that 12 percent of facilities owned by small business were at risk of closure because of the final rule, and a SBREFA panel recommended that EPA provide special flexibility to these companies. Provisions to reduce the adverse impact on small business, including minimized reporting and recordkeeping

requirements and establishing separate floors for specialty products, were incorporated into the final rule.

This notice announces that EPA will review this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID number EPA-HQ-OAR-2012-0816 and follow the instructions provided in the **ADDRESSES** section of this document. The results of EPA's review will be summarized in a report and placed in the rulemaking docket referenced above. This docket can be accessed at [www.regulations.gov](http://www.regulations.gov).

#### **IV. Section 610 Review of National Pollutant Discharge Elimination System (NPDES) Permit Regulation and Effluent Limitations Guidelines Standards for Concentrated Animal Feeding Operations (CAFOs)**

EPA promulgated revised regulations for CAFOs on February 12, 2003 (68 FR 7175). The “2003 CAFO Rule” expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs. The 2003 CAFO Rule required all CAFOs to seek NPDES permit coverage. The EPA developed a Final Regulatory Flexibility Analysis (FRFA) for the 2003 CAFO Rule. In the 2003 CAFO Rule, the EPA took several steps to minimize its impacts on small businesses, including regulatory revisions designed to focus on the largest producers, eliminating the “mixed” animal calculation for

operations with more than a single animal type for determining which AFOs are CAFOs, raising the duck threshold for dry manure handling duck operations, and adopting a dry-litter chicken threshold higher than proposed.

Subsequently, a series of court decisions based on legal challenges to the rulemaking have limited the requirement for NPDES permit coverage specifically to CAFOs that discharge. In response to these court decisions, the EPA made revisions to the CAFO regulations in 2008 (73 FR 70418) and 2012 (77 FR 44494). In promulgating the 2008 regulatory revision, the EPA certified that the 2008 rule would not have a significant adverse economic impact on a substantial number of small entities. In promulgating the 2012 regulatory revision, the 2012 rule was not subject to the RFA because the RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute, and the 2012 rule was not subject to notice and comment requirements. Both rules reduced the potential impact of the EPA's CAFO regulations on small entities by reducing the universe of CAFOs that must apply for NPDES permits. This notice announces that EPA will review this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID number EPA-HQ-OW-2012-0813 and follow the instructions provided in the **ADDRESSES** section of this document. The results of EPA's review will be summarized in a report and placed



in the rulemaking docket referenced above. This docket can be accessed at [www.regulations.gov](http://www.regulations.gov).

Dated: October 25, 2012

Alexander Cristofaro

Director, Office of Regulatory Policy and Management.

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